No. 37

In the Supreme Court of the United States

OCTOBER TERM, 1960

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
J. WALTER YEAGLEY,
Assistant Attorney General,
BRUCE J. TERRIS,
Assistant to the Solicitor General,
KEVIN T. MARONEY,
LEE B. ANDERSON,
Attorneys,
Department of Justice, Washington 25, D.C.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 4a–12a) is reported at 272 F. 2d 783.

JURISDICTION

The judgment of the court of appeals was entered on December 14, 1959. The petition for rehearing was denied on January 14, 1960. A petition for a writ of certiorari was filed on February 12, 1960, and granted on March 28, 1960 (R. 267; 362 U.S. 926). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities, possessing information that petitioner was an important member of the Communist Party and had been sent to Atlanta by the Party for propaganda purposes, was authorized by the House of Representatives to subpoena and question him as to his membership and activities in the Communist Party in the course of a duly authorized investigation into Communist activities in the South.

2. Whether the question asked petitioner as to his membership in the Communist Party was pertinent to the subjects under inquiry and whether petitioner was made aware of the pertinency.

3. Whether the action of the Committee in subpoenaing and questioning petitioner violated his rights under the First Amendment.

STATUTE AND RULES INVOLVED

2. U.S.C. 192 (R.S. 102, as amended) provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

The pertinent provisions of Rules X and XI of the House of Representatives, adopted for the Eighty-fifth Congress by H. Res. 5, 85th Cong., 2d Sess., are set forth at R. 75–76, 256–262, and in Appendix A to the Petition for Certiorari, pp. 1a–3a.

STATEMENT

Petitioner was charged in a one-count indictment with having knowingly, wilfully, and unlawfully refused, in violation of 2 U.S.C. 192, to answer a question pertinent to the matter under inquiry, asked him by a subcommittee of the House Committee on Un-American Activities. The question was "Are you now a member of the Communist Party?" [1] (R. 1).

1. The government offered the following evidence at petitioner's trial:

Rule X of the standing Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, provides for a Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress. Rule XI of the standing Rules (60 Stat. 823, 828) provides that this Committee, "or any subcommittee thereof," is authorized to investigate "(i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a

[1] The Committee reported the petitioner's contumacy to the House of Representatives (U.S. Ex. 2; R. 235), and the House certified the Committee's report to the United States Attorney for prosecution (H. Res. 685, 85th Cong., 2d Sess.; U.S. Ex. 13; R. 265).

domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." These standing Rules were specially adopted by the House, at the beginning of the Eighty-fifth Congress (during which the offense involved here occurred), as part of the rules of the House for that Congress (H. Res. 5, 85th Cong., 1st Sess.; R. 255–262).

Pursuant to the foregoing authority, the Committee on Un-American Activities passed a resolution providing that public hearings be held in Atlanta, Georgia, to inquire into "[t]he extent, character, and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South," "[e]ntry and dissemination within the United States of foreign Communist Party propaganda," and "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (U.S. Ex. 1,[2] pp. 2605–2606; R. 79–80). The specifically stated purpose of this investigation was to obtain information concerning pending or possible legislation (*id.* at 2605; R. 79). Acting under this resolution, the Chairman of the Committee designated a three-man subcommittee to hold a public hearing in

[2] U.S. Ex. 1 is the printed transcript of the hearings on July 29, 30, and 31, 1958, before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Communist Infiltration and Activities in the South," set out in the record at pp. 71–234.

Atlanta, Georgia, on July 29, 30, and 31, 1958 (*id.* at 2606; R. 80). At the trial, the Staff Director of the Committee testified concerning the Committee's reasons for calling this hearing (R. 29):

> Mr. Pen[h]a[3] testified and gave us information in conferences in addition to his testimony to the general effect that with the movement toward industrialization of the South, the movement of textile industry to the South, development of industrial activities in the South, that the Communist Party and the communist operation was intensifying its efforts in the South by sending into the South colonizers, propagandists, agitators, people who were communist who were carrying on communist activities in the South; that the information which he had on this subject he had derived from personal experience in the course of the then recent past in the Communist operation.

The Staff Director further testified that the hearings were intended to investigate Communist infiltration of basic industries, Communist propaganda activities, foreign Communist propaganda, all in the South, and other matters (R. 18, 38–39).

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[3] Armando Penha was a member of the Communist Party from 1950 to 1958 and was a member of the Party's National Textile Commission, which he described as "the leading body, nationally, that is set up for the purposes of controlling, coordinating, and supervising the infiltration and colonization within the textile industry, particularly within the South" (U.S. Ex. 1, p. 2609; R. 83). For a summary of his testimony at the hearings, see *infra*, pp. 8–10.

At the opening of the hearing, on July 29, the Chairman of the Committee summarized the purposes of the hearing (U.S. Ex. 1, pp. 2606–2607; R. 80–81):

> * * * [T]he Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.
>
> In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.
>
> The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since

divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism.

We know that the strategy and tactics of the Communist Party are constantly changing for the purpose of avoiding detection and in an attempt to beguile the American people and the Government respecting the true nature of the conspiracy. As we on the Committee on Un-American Activities seek to develop factual information on these changing strategies and tactics for our legislative purposes, we are constantly met with numerous and unfounded charges respecting the nature of our work and our objectives. Such charges will not dissuade us from our duty. We seek the facts and only the facts. Insofar as it is within the power of this committee, as a part of the United States Congress, we shall obtain the facts and we shall do so within the framework of carefully prescribed procedures of justice and fair play.

I have long felt that the effectiveness of this committee appears to be in direct ratio to the volume of attack against it which is waged by the Communist Party and those under Communist discipline. Accordingly, I was interested to take note some several months ago of the intensified activity against the Committee on Un-American Activities and the Fed-

eral Bureau of Investigation which is now being promoted by the Communist Party. This campaign was the subject of a special booklet which the committee issued entitled "Operation Abolition." * * *

* * * * *

Preliminary investigations by the staff of this committee indicate that the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North.

May I emphasize that the purpose of the committee here in Atlanta is to develop facts with reference to a pattern of operation and not to attempt to exhaust the subject matter. We have not subpenaed witnesses for these hearings merely for the sake of exposure or to put on a show. We are engaged in the serious business of tracing the operations in the United States of a world-wide conspiracy which is determined to destroy us. Should we attempt to interrogate in these hearings even a significant percentage of all possible witnesses on whom we have lead information regarding Communist activity in the South, we would be here for many months to the neglect of our work elsewhere.

* * * * *

Petitioner stipulated at the trial that he had heard the Chairman's opening statement (R. 34, 50–51).

The first witness to appear at the hearing was Armando Penha, who testified that he had been a member of the Communist Party from 1950 until 1958, having joined the Party at the request of the

F.B.I.; that he had attained positions of importance within the Communist Party, including membership on the National Textile Commission of the Party with headquarters in New York City; and that the National Textile Commission was a national body set up by the Communist Party "for the purposes of controlling, coordinating, and supervising the infiltration and colonization of Communists within the textile industry, particularly within the South" (U.S. Ex. 1, p. 2609; R. 83). Penha described a "colonizer" as (*id.* at 2611; R. 85):

> A colonizer is one that is directed by the Communist Party to teach and spread propaganda in order to cultivate the mass workers within a plant or industry or legitimate organization. He must use, in his tactics, methods of spreading confusion, agitation. Such attacks are to be made both legally and illegally. He has to be able to cope with existing situations—one moment being on the offensive and the other on the defensive—participating in open activities of mass agitation and propaganda while, at the same time, being capable of undertaking concealed activities which will obstruct and undermine public confidence in our foreign policy.
>
> However, the clear-cut danger of a colonizer is that he is a part of a vast network of secret party members, of potential saboteurs and espionage agents. The placement of these colonizers in key and basic industries is vital to the party from the standpoint of placing such colonizers in the position of promoting strikes, slowdowns, and so forth. In such concealed

positions a colonizer, in the event of an emergency, becomes very effective to commit sabotage.

Penha stated that the colonizers are Party members from the North who take jobs in textile mills and industries as laborers and that, while colonizers seek placement in very menial employment, "the average colonizer either holds a bachelor's, master's, or doctor's degree" which he conceals from his fellow employees and employer (U.S. Ex. 1, p. 2619; R. 93). He further described the process by which Communist Party members infiltrate both labor union organizations and industry (*id.* at 2620–2621; R. 94–95) and the use of the "front organization" in attaining Party goals (*id.* at 2623; R. 97); testified that it was the aim and purpose of the Communist Party in the South to "agitate and use every means within their command to raise political and economic issues of the Negro people in order to create mass agitation and foment discord at the same time" (*id.* at 2612; R. 86); related that the Party in attempting to bring pressure on the Congress had been very effective in utilizing non-Communist individuals to communicate and petition Congress in opposition to proposed legislation distasteful to the Party (*id.* at 2623–2624; R. 97–98); and said that Party activities in the South are directed from Party headquarters in the North (*id.* at 2627; R. 101).

Following the appearance of Armando Penha, Eugene Feldman, who had been mentioned by Penha as a colonizer in the South for the Communist Party, was called before the Subcommittee (U.S. Ex. 1, p.

2619; R. 93). Most of the questions asked Feldman concerned the Southern Newsletter, which the Committee believed was edited and published by him[3a] (*id.* at 2630–2635; R. 104–109). Among the questions which he refused to answer were whether he was in fact a Party colonizer in the South and whether he had written a particular edition of the Southern Newsletter attacking the Committee (*id.* at 2632–2633; R. 106–107). Feldman invoked the protection of the First and Fifth Amendments on practically every question (*id.* at 2629–2635; R. 103–109).

Irving Fishman, Deputy Collector of Customs in New York City, testified concerning the large volume of political propaganda imported into the United States from the Soviet bloc countries, some of it directed to persons to disseminate and redistribute in domestic publications, some directed to students, student organizations, editors of college newspapers, and the like (U.S. Ex. 1, p. 2638; R. 112). Perry Cartwright, the business manager of the Southern Newsletter, answered most of the questions asked by the Subcommittee about that publication except as to his associates (*id.* at 2643–2648; R. 117–122). He denied that he was a member of the Communist Party (*id.* at 2645; R. 119).

Clara Hutcherson Saba stated that she had been an organizer for the Food, Tobacco, and Agricultural Workers Union in North Carolina in the early 1940's

[3a] The Committee had information that the Southern Newsletter was under Communist direction and was distributed in the South under Communist auspices. See pages 28 and 31 of the Record in No. 54, this Term.

and had subsequently held numerous jobs for short periods of time, mostly in the South (U.S. Ex. 1, pp. 2649, 2652–2653; R. 123, 126–127). She was told that Ralph Long, a former Party member, had stated that he knew her as a Party member, but she refused to answer any questions as to her relationship to the Communist Party (*id.* at 2651–2653, 2658; R. 125–127, 132). Mrs. Saba's husband, Mitchell Saba, then refused to answer whether he was a member of the Communist Party, on the ground of the First Amendment (*id.* at 2661; R. 135). John Hester invoked the Fifth Amendment concerning whether he was a Party member or had engaged in Party activities in Atlanta in 1956 and 1957 (*id.* at 2665; R. 139).

Carl Braden was the first witness on the second day of the hearings, July 30, 1958.* He was told that the Committee had information from reliable witnesses that he was a member of the Communist Party; that he had worked to further Communist activities and propaganda principally in the South; that Harvey O'Connor, whom petitioner said he had been visiting when the Committee's subpoena was served, was a leading member of the Communist Party; and that the Southern Conference Educational Fund, of which petitioner testified he was a field organizer, was a Communist front (U.S. Ex. 1, pp. 2668–2671, 2675, 2680–2681; R. 142–145, 149, 154–155). The Staff Director of the Committee explained that he was being questioned so that it could evaluate present and contemplated legis-

* Braden was likewise convicted of contempt and is the petitioner in No. 54, this Term. The facts as to his contempt will be more fully described in our brief in that case.

lation dealing with Communist activities (*id.* at 2669; R. 143). The witness, however, invoked the First Amendment as to any questions connecting him with alleged Communist activity (*id.* at 2668–2671, 2674–2679; R. 142–145, 148–153).

Petitioner also appeared before the subcommittee on July 30, 1958. The Staff Director of the Committee testified at the trial that, at that time, the Committee had the following information (R. 29–30):

> * * * In essence the information of which the committee was possessed was that Mr. Wilkinson was a member of the communist party, that he had been identified by a creditable witness under oath before the committee a short time or within a year or so prior to the Atlanta hearings, identified as a Communist. It was also the information of the committee that Mr. Wilkinson had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South of a group known as the Emergency Civil Liberties Committee which itself had been cited by the Internal Security Subcommittee as a communist operation or a communist front. It was the information of the committee that Mr. Wilkinson's assignments, including setting up rallies and meetings over the country for the purpose of engendering sentiment against the Federal Bureau of Investigation, against the security program of the government, and against the Committee on Un-American Activities and its activities. Mr. Wilkinson had in the course of the relatively recent past prior to his appearance in Atlanta been sent into Atlanta by the communist operation for the purpose of con-

ducting communist activities in the South and more specifically in the Atlanta area. What I'm telling you now is only a general summary, you understand.

The Staff Director then described the Committee's basis for subpoenaing petitioner (R. 30):

> [Assistant United States Attorney Sparks] * * * Now, did the committee originally plan to call [petitioner] as a witness at the Atlanta hearings or did information come to the committee which caused them to subpoena him only a week before the hearing?
>
> [Staff Director Arens] The latter is true, but may I explain just a little bit, if you please, sir. The committee knew that Mr. Wilkinson was actively engaged for some considerable period of time in communist work in the Emergency Civil Liberties Committee and in the various operations which I have described. The Committee did not know specifically that Mr. Wilkinson was coming into the South, particularly in this area, in connection with his Emergency Civil Liberties Committee work. We had his agenda of other meetings which we had procured by our investigative processes, other meetings and other activities in which he was engaged over the country. It was only in the course, if my memory serves me correctly and I will have to be a little bit general on this, it was only in the course of a matter of a few weeks at the most, I believe, perhaps less than that, that the committee became aware of Mr. Wilkinson's presence in Atlanta and feel that it was desirable for him to be subpoenaed for the hearings which had been set for Atlanta prior

to the time we gained knowledge of his visit here.[5]

After petitioner was sworn at the hearing, he stated his name, but refused to answer a question as to his residence.[6] Instead, he said, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee" (U.S. Ex. 1, p. 2681; R. 155). He then gave the same answer to a question concerning his occupation. And, when he was asked the question which was the subject of his indictment and conviction, "Mr. Wilkinson, are you now a member of the Communist Party?," he again gave the same answer (*ibid.*).

The Staff Director of the Committee told the witness the authority of the Committee and the purposes of the current investigation (U.S. Ex. 1, p. 2682; R. 156):

> The Committee on Un-American Activities has two major responsibilities which it is undertaking to perform here in Atlanta.
>
> Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal se-

[5] At petitioner's trial, the Chief Deputy United States Marshal in Atlanta testified that the subpoena served on petitioner was received from the Marshal's office from Washington, D.C., on the morning of July 23, 1958 (six days before the hearings opened) and was served by him on petitioner the afternoon of the same day within an hour of petitioner's arrival at the Atlanta Biltmore Hotel (R. 40–41). Apparently, the Committee had learned that petitioner was coming to Atlanta, rather than of his actual presence there (see Pet. Br. 21, note 6).

[6] Although petitioner did not have counsel present, he stated that he knew that he had this privilege (U.S. Ex. 1, p. 2681; R. 155).

curity laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Communist Party and the Communist conspiratorial operations in the United States. H.R. 9937[7] is one of those. Other proposals are pending before the committee not in legislative form yet, but in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the

[7] H.R. 9937, 85th Cong., 2d Sess., entitled "A Bill to Amend the Internal Security Act of 1950, and for other purposes," encompassed a number of separate matters relating to the internal security field. For example, the bill would have amended the Smith Act by adding a definition of the term "organize," amended Title 18, Chapter 37, of the United States Code relating to espionage, extended the period of the statute of limitations in certain types of security cases, and amended 22 U.S.C. 611(b) (the Foreign Agents Registration Act).

> United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

The Staff Director then described the information which the Committee possessed that petitioner was "a hard-core member of the Communist Party," had been "designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee," and had been sent to the Atlanta area by the Party "for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpenaed to appear before this committee until you had actually registered in the hotel here in Atlanta"[8] (*ibid.*). He further said that, if petitioner answered the question concerning his Party membership, the Subcommittee would then inquire concerning petitioner's activities "as a Communist on behalf of the Communist Party," his activities "from the standpoint of propaganda," and his activities attempting to destroy the F.B.I. and the Committee (*id.* at 2683; R. 157). The purpose of these additional questions

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[8] The latter part of this statement is apparently somewhat inaccurate since the subpoena seems to have been issued when the Committee learned petitioner was coming to Atlanta and served immediately after he arrived (see *supra*, p. 14, note 5).

would have been "to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States" (*ibid.*).

The Staff Director then repeated the question: "Are you now a member of the Communist Party?" (U.S. Ex. 1, p. 2683; R. 157). Petitioner answered: "I am refusing to answer any questions of this committee" (*ibid.*). After the Staff Director requested the Chairman of the Subcommittee to order petitioner to answer the question, the Chairman of the Subcommittee again explained the purpose of the hearing (*id.* at 2683; R. 157):

> There is a bill pending right now before the Congress. We have held hearings on it just a couple of weeks ago on the question of the organizational features of the Communist conspiracy. Specifically the Supreme Court, in what is popularly referred to as the Yates Case, held that the Communist Party must be regarded as having been organized in 1945 and that automatically thereby all prosecutions for organizational features have been destroyed and no more prosecution is possible.
>
> We take the position that what happened in 1945 was a reconstruction of the party, rather than an organization of it; that it had been organized years before. And we received evidence yesterday along the lines of the present techniques in connection with new organizational efforts; and among other reasons for pertinency of these hearings, would be the development of information which we feel you have, sir, that you could shed light on the cur-

> rent methods of organizing or regrouping or reconstructing of the party and subdivisions thereof.

The Chairman of the Subcommittee warned petitioner that "we disagree with your position as a basis for possible contempt proceedings" (*ibid.*), but advised him that he had the right to invoke the Fifth Amendment if he feared that his answers might incriminate him (*id.* at 2683–2684; R. 157–158). The Chairman then ordered petitioner to answer the question concerning petitioner's Party membership (*id.* at 2684; R. 158). Petitioner again refused to answer (*ibid.*):

> Mr. WILKINSON. I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.
>
> I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the

press, wherein it cannot legislate and therefore it cannot investigate.

I am, therefore, refusing to answer any questions of this committee.

The Staff Director of the Committee read to petitioner the testimony of Anita Schneider, taken at a previous hearing in Los Angeles, that the Citizens Committee to Preserve American Freedom was Communist controlled, that her contact in the organization was petitioner, that she knew petitioner to be a Communist, and that he asked her to start a similar organization in San Diego (U.S. Ex. 1, p. 2684; R. 158). The Staff Director then asked petitioner whether Mrs. Schneider was correct in testifying that he was a Communist (*ibid.*). Petitioner simply answered that "I am refusing to answer questions" (*id.* at 2685; R. 159). Petitioner refused to answer whether he knew Mrs. Schneider "on the grounds which I have stated previously," and also refused to say where he was when subpenaed by the Committee to appear, without giving a reason (*ibid.*).

Petitioner was asked to identify a reproduction of a handwritten registration card at the Atlanta Biltmore Hotel of himself and a Dr. James A. Dombrowski, showing his registration on July 23, 1958, giving his address as New York, his business firm as the Emergency Civil Liberties Committee, and his intention to check out in a week (U.S. Ex. 1, p. 2685; R. 159). Petitioner answered that "I am refusing to answer any questions of this committee" and "I refuse to answer any questions of this committee on the grounds of my initial answer. The House Committee on Un-American Activities stands in direct violation

of the first amendment to the United States Constitution" (*ibid.*). He also refused to answer whether he had made the long distance telephone calls from the Atlanta Biltmore Hotel on July 23, 1958, as shown by a document received by the Subcommittee from the hotel (*id.* at 2686; R. 160). Petitioner again gave as his reasons "the grounds of my initial answer. The mandate of the House Committee on Un-American Activities stands in direct violation of the first amendment to the United States Constitution" (*ibid.*). A member of the Subcommittee asked, to be "absolutely clear," whether petitioner was relying on the First Amendment (*ibid.*). Petitioner thrice stated that his initial answer was his complete answer (*id.* at 2686–2687; R. 160–161). Petitioner refused to answer whether "you are part of an enterprise to destroy the very Constitution of the United States under which we all have protection; that you are the agent of the Communist Party as an arm of the international Communist conspiracy sent into Atlanta for the purpose of engaging in conspiratorial activities on behalf of the Communist Party" (*id.* at 2687; R. 161). The Chairman of the Subcommittee then told petitioner (*ibid.*):

> You have not made it abundantly clear whether you are invoking the protection of the first amendment upon a feeling on your part that you want to personally rely, and it is a personal matter to you, on that amendment as a basis for refusal or whether your reference to the amendment is, let us say, philosophical conversation or some other ideas you might have in mind.

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Will you not please try to clarify that point for us?

Mr. WILKINSON. My answer is my answer.

Following petitioner's testimony, Mrs. Madge Spurny Cole, who had been identified by Armando Penha as a "colonizer" for the Communist Party (U.S. Ex. 1, p. 2616; R. 90), was summoned to testify. Mrs. Cole said that, although she possessed both bachelor's and master's degrees, she had been employed as a waitress and as a "spare hand" and other such positions in the textile industry in the South (*id.* at 2688–2690; R. 162–164). Mrs. Cole invoked the Fifth Amendment when asked if she knew Armando Penha and whether she was a Communist (*id.* at 2692–2693; R. 166–167). At this point, Penha was asked to testify and again identified Mrs. Cole as a "colonizer" for the Communist Party (*id.* at 2693–2694; R. 167–168). Mrs. Cole then invoked the Fifth Amendment as to whether Penha was telling the truth (*id.* at 2694; R. 168).

William Robertson testified that he had been an organizer for the Food, Tobacco, and Agricultural Workers in North Carolina in 1949 and that from 1949 to 1955 he had been employed as a laborer for short periods of time in various southern textile and other factories (U.S. Ex. 1, pp. 2697–2698; R. 171–172). He admitted that he had not told the truth about his undergraduate and graduate degrees in an application for work in a textile mill (*id.* at 2696, 2699; R. 170, 173). When he refused to answer whether he knew Mrs. Cole, the Staff Director of the Committee stated that "[t]his committee is un-

dertaking to develop factual information respecting the administration and operation of certain anti-Communist legislation which is on the books and to assemble information which will enable it to appraise legislative proposals pending before it" (*id.* at 2700; R. 174). More specifically, he explained that the "committee is here in Atlanta for the purpose of developing factual information respecting Communist techniques, principally Communist techniques and colonization in the South" (*ibid.*). The witness refused to answer various questions, including whether he was a member of the Communist Party, under the First and Fifth Amendments (*id.* at 2701; R. 175). Among these questions was the inquiry whether Penha was correct in naming Robertson as an active Party colonizer in the South (*id.* at 2615, 2701; R. 89, 175).

Karl Korstad testified that, although he had undergraduate and masters degrees, he had worked as a union organizer for the Food, Tobacco, and Agricultural Workers Union in the South from 1945 or 1946 to 1951 (U.S. Ex. 1, pp. 2704–2705; R. 178–179). He refused to answer, invoking the First and Fifth Amendments, whether he was a member of the Communist Party and whether Penha was correct in identifying him as a Party colonizer (*id.* at 2705–2708, 2619; R. 179–182, 93).

Jerome Van Camp testified that, after he completed two years of college work, he had held numerous laboring jobs for short periods of time, most of them in the South (U.S. Ex. 1, pp. 2709–2711; R. 183–185). He refused to answer whether he was a present or past

member of the Communist Party or whether Penha was correct in describing him as a Party colonizer (*id.* at 2711–2712, 2615; R. 185–186, 89). Hunter O'Dell likewise refused to answer whether he was a Party member, whether he wrote an article which appeared under his name in the Communist periodical Political Affairs, and several similar questions (*id.* at 2716–2718; R. 190–192). During his testimony, the Staff Director of the Committee stated that the Committee was "seeking to develop factual information which it can use in devising legislative enactments to protect this Nation against this conspiratorial fifth column," that two witnesses had identified the witness as a Party member, and that a detailed program for Communist infiltration of the South had been found by the New Orleans police on his premises[9] (*id.* at 2714–2716, 2719; R. 188–190, 193). William Matthews, who was identified by Penha as a Party colonizer sent to the South from New York (*id.* at 2616, 2618; R. 90, 92), denied that he had ever been a Party member or knew Penha (*id.* at 2722–2725; R. 196–199). He refused to answer several other questions relating to his past employment, particularly in the textile industry, on the basis of the Fifth Amendment (*id.* at 2722–2724; R. 196–198).

On the third day of the hearings in Atlanta, the Subcommittee heard testimony from an unnamed

[9] This program was described as including "organizational plans and specifications, mass agitation, permeation of the press, Party building, cadres, literature, finances, educational activities, outlined plans for industrial concentration, and the like" (U.S. Ex. 1, p. 2716; R. 190).

Hungarian concerning his experiences in Hungary and the Soviet Union and as to the nature of the world Communist movement (U.S. Ex. 1, pp. 2728–2753; R. 202–227). The Chairman of the Subcommittee then made a statement closing the hearings (*id.* at 2753–2754; R. 227–228):

> In the first place, we have seen here a pattern of Communist activities and techniques which verifies and confirms similar patterns which we have been observing elsewhere in the Nation.
>
> There has been developed here new and convincing evidence regarding the problem of Communist propaganda, both foreign and domestic. There has been revealed factual information respecting strategy and tactics of Communists in maneuvering into groups and organizations which they seek to influence in the Communist objectives.
>
> * * * * *
>
> Finally, there has been developed information which should stand as a warning to the South, namely, that as the textile and other industries are developed in the South, there is the ever-present threat of Communist penetration.
>
> * * * We believe that the evidence which is in our records now * * * does add materially to the fund of information already available as a foundation for legislative action.
>
> * * * * *
>
> We on the committee will return to Washington with the information which has been developed here and use it as part of the fund of knowledge which we are gaining to assist us in the discharge of our duties, which, under a

mandate of the Congress are, in essence, to maintain a continuing surveillance over the operation of our various security laws and to recommend, when necessary, amendments to these laws or the enactment of new ones.

2. At the close of the government's case—the defense offered no evidence—the district court ruled as a matter of law that the Subcommittee had the right to ask the question concerning petitioner's membership in the Communist Party, that the question was pertinent to the subject under inquiry by the Subcommittee, and that therefore petitioner had a duty to answer it (R. 57). The court submitted to the jury the issue whether the pertinency of the question and its relation to the subject under inquiry were sufficiently explained to the petitioner by the Subcommittee (R. 59–60). The jury found petitioner guilty and he was sentenced to imprisonment for twelve months. On appeal to the Court of Appeals for the Fifth Circuit, the conviction was affirmed (R. 63–70) on the ground that "the Barenblatt case is controlling here" (R. 69).

SUMMARY OF ARGUMENT

I

A. The record demonstrates that petitioner was not subpoenaed to appear before the Subcommittee in order for it to investigate mere criticism of the House Committee on Un-American Activities. On the contrary, examination of the Committee's resolution authorizing the hearings, the testimony of the Staff Director of the Committee at petitioner's trial, the opening statement of the Chairman of the Committee,

the testimony and questioning of other witnesses at the hearings, the Subcommittee's explanation of the question asked petitioner which he refused to answer, and the closing statement of the Subcommittee Chairman show that the Committee had three subjects under investigation for which it subpenaed and questioned petitioner. The first and apparently most important one was Communist infiltration and colonization activities in the South; the second was the Party's organization; and the third was the Party's propaganda activities, especially in the South, including, but not confined to, its efforts to hinder and abolish the F.B.I. and the Committee.

Petitioner's contention that the Subcommittee was investigating no more than criticism of the Committee rests almost entirely on a single statement of the Staff Director made when petitioner refused to answer. But when this statement is considered in context, it clearly refers only to the *occasion* for calling petitioner as a witness (*i.e.*, that petitioner happened to be in Atlanta), not to the purpose for which he was called or to the subject under inquiry. This construction is supported by the Staff Director's testimony at petitioner's trial explaining why the Committee decided to subpoena petitioner, as well as by the other strong evidence of the Committee's purposes described above. Thus, if the Subcommittee were investigating petitioner's criticism of the Committee at all, it was a portion of its investigation of Communist propaganda activity. And even if it were considered as a separate subject of investigation, it was only one of four such subjects.

B. The three subjects of the Subcommittee's investigation were clearly within House Rule XI, which is the authorizing resolution of the Committee. This Court in *Barenblatt* v. *United States*, 360 U.S. 109, 118, held, on the basis of Rule XI and its gloss of legislative history, that "the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country." Moreover, Rule XI authorizes the Committee to investigate "the extent, character, and objects of Un-American propaganda activities in the United States," and there seems no reason to exclude from this authorization the Party's propaganda activities directed against the F.B.I. and the Committee.

Rule XI gives the Committee's subcommittees the same authority as that granted the Committee itself. In addition, the Committee passed a resolution authorizing this Subcommittee to hold hearings on the subject of Communist colonization and infiltration in basic industries in the South, Communist propaganda activities in the South, and any other subject which the Subcommittee might designate which is within the Committee's authority.

Even if petitioner's criticism of the Committee were considered as an independent subject of investigation, this subject was also authorized, since the Committee and Subcommittee had authority to investigate all Communist activity and they had been informed that petitioner was a leading Party member. But even if this subject were not authorized, petitioner was subpenaed in relation to three other authorized subjects

of investigation and the question he refused to answer was pertinent to these subjects as well.

II

A. A series of decisions by this Court has established that a witness charged with contempt cannot raise at his trial issues which he did not raise before the tribunal before which the contempt occurred—at least when the tribunal might have been able to remedy the witness' objection. A congressional committee can remedy a pertinency objection by fully explaining the pertinency of the question to the subject under inquiry or even by changing the subject under inquiry, if necessary. Moreover, *Watkins* v. *United States,* 354 U.S. 178, and *Barenblatt, supra,* establish that a witness cannot raise the issue of pertinency for the first time at his trial. Here, petitioner based his refusal to answer entirely on First Amendment grounds and there was not even a suggestion of an objection to pertinency.

B. In any event, the pertinency of the question asked petitioner was clear and this pertinency was made to appear with indisputable clarity to petitioner. As has been stated, the three purposes of the Subcommittee, *i.e.,* the subject under inquiry when petitioner was questioned, were Communist infiltration and propaganda activities in the South, and the Party's organization. The question whether petitioner was a member of the Communist Party was an introductory, qualifying question which was obviously pertinent to all three subjects which the Subcommittee intended to pursue.

As to whether petitioner was adequately apprised of the pertinency of the question at the Subcommittee's hearings, the jury found that he was so apprised. This finding is fully supported by the evidence. The three subjects under inquiry were described to petitioner by the means prescribed in *Watkins* (354 U.S. at 211–214: the resolution authorizing the Subcommittee hearings (petitioner was present when it was introduced into the record), the opening statement of the Chairman (petitioner was then present), the questioning and testimony of other witnesses, and the response of the Subcommittee when petitioner refused to answer the question. The pertinency of the question as to petitioner's Party membership to these subjects was explained to petitioner by the Subcommittee through informing him as to what its general line of inquiry would be. Moreover, *Barenblatt* determined that the pertinency to an investigation of Party activities of a witness' Party membership is, without explanation, "clear beyond doubt" (360 U.S. at 125).

III

The Subcommittee's investigation did not violate the First Amendment.

A. The Subcommittee was acting pursuant to a valid legislative purpose. The Court has held that the Communist Party is not an ordinary political party and that therefore Congress has broad power to legislate as to its activities (*Barenblatt*, 360 U.S. at 128). Moreover, Congress' power to investigate extends, at least to some extent, beyond its power to legislate since "of necessity the investigatory process must pro-

ceed step by step" (*id.* at 130). Thus, the Subcommittee's power to investigate Communist infiltration, particularly in basic industries, and of the Party's organization, is clear.

The power of the Subcommittee to investigate Communist propaganda activities is also established by *Barenblatt*. There, the Court held that the Committee could investigate Communist activities in the field of education, even though this field is protected by the First Amendment. Equally, the Subcommittee here had the constitutional power to investigate Communist activity in the field of propaganda even though this area is likewise protected by the First Amendment.

Petitioner's contention that he was subpoenaed because of his criticism of the Committee and therefore merely for purposes of harassment or exposure is without merit. First, as we have said, petitioner was not subpoenaed by the Committee because of his criticism of it. Second, even if it were, this criticism was part of the Party's propaganda activities and is therefore a proper subject of investigation. Third, it was at most only one of several reasons for subpoenaing petitioner, and the others were entirely valid. Fourth, the Court has upheld disclosure statutes relating to the integrity of basic governmental functions such as elections and lobbying. *A fortiori*, the investigative power of Congress, which is broader than its legislative power, includes attempts to ascertain the source of criticism of congressional committees, at least when the Communist Party is involved. Since the Party's ultimate objective is overthrow of the legislative process and, indeed, the entire Government

of the United States—to which its intermediate objectives (such as abolition of the Committee) are dedicated—the Committee can investigate its efforts in this field just as it can investigate its activities in education and propaganda. Lastly, *Watkins* and *Barenblatt* establish that the courts will not, and cannot, examine the motives of Congress in conducting an investigation.

B. The balance of individual and governmental interests supports the Subcommittee's inquiry. The governmental interests here at stake are at least as strong as in *Barenblatt*. The Subcommittee was investigating Communist infiltration, particularly in basic industries, the organization of the Party, and Communist propaganda activity. Because of the clear connection between the Communist Party and violent overthrow of government, this Court has repeatedly recognized the strong governmental interest in this area. Moreover, here, unlike in *Barenblatt*, the investigation was not into what is perhaps the peculiarly sensitive area of education, and the only question asked by the Subcommittee involved present (not past) Communist membership.

ARGUMENT

In *Barenblatt* v. *United States*, 360 U.S. 109, the Court held that Congress had authorized the House Un-American Activities Committee to compel testimony from a witness employed in the field of education about his membership in the Communist Party (*id.* at 116–123); that a witness must raise the issue

of pertinency and that, in any event, the record showed that the witness knew of the pertinency of the questions asked (*id.* at 123–125); that the First Amendment does not prevent a congressional committee from investigating Communist activity in the field of education (*id.* at 125–132); and that, if Congress acted pursuant to its constitutional power, the courts cannot interfere with the investigation on the basis of the motives underlying it (*id.* at 132–134). Petitioner raises these same issues again, but attempts to distinguish *Barenblatt* principally on the ground that the Subcommittee here was investigating only "public criticism of the Committee" [10] (Pet. Br. 17). As we will show, however, the Subcommittee was not investigating mere "public criticism" of itself, but rather all the Party's propaganda activities in the South. Indeed, it was investigating not only Communist propaganda activities but Communist infiltration in basic industries in the South and the Party's organization. These subjects of investigation are not substantially different, either constitutionally or otherwise, from Communist activities in education which was being investigated in *Barenblatt*. We therefore submit that, as the court of appeals held, this Court's decision in *Barenblatt* fully answers petitioner's contentions, and is controlling.

[10] The position of the *amicus*, the National Lawyers Guild, is also based on this erroneous premise.

I. THE COMMITTEE AND SUBCOMMITTEE WERE AUTHORIZED BY CONGRESS TO SUBPOENA PETITIONER

A. THE SUBJECTS UNDER INQUIRY FOR WHICH PETITIONER WAS SUBPOENAED WERE COMMUNIST INFILTRATION AND PROPAGANDA ACTIVITY IN THE SOUTH AND THE ORGANIZATION OF THE COMMUNIST PARTY

The record demonstrates that petitioner was not subpoenaed to appear before the Subcommittee in order for it to investigate mere criticism of the House Committee on Un-American activities. The resolution of the Committee authorizing the hearings stated that their purpose was to inquire into "[t]he extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South," "[e]ntry and dissemination within the United States of foreign Communist Party propaganda," and "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (U.S. Ex. 1, pp. 2605–2606; R. 79–80). The Staff Director of the Committee testified at petitioner's trial that the hearings were intended to investigate Communist infiltration of basic industries, Communist propaganda activities, and foreign Communist propaganda, all in the South (R. 18, 38–39). Consistently with the authorizing resolution, the Chairman of the Committee stated, at the beginning of the hearings, that "[t]he hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation," that such continuous investigation is necessary in order to evaluate existing and contemplated legislation in this field, and that these hearings were specifi-

cally designed to investigate information that "the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentrated points in the metropolitan areas of the North" (see the Statement, *supra*, pp. 6, 8). While the Chairman mentioned efforts of the Communist Party to abolish the Committee (see *supra*, pp. 7–8), he did not indicate that such activity existed particularly in the South or that these hearings were to investigate this issue.

The two principal voluntary witnesses who appeared at the hearings both testified before petitioner. Armando Penha described the activities of the Communist Party in infiltrating the textile industry in the South, Party propaganda activities in the South, and the leadership of Party programs in the South from headquarters in the North (see *supra*, pp. 8–10). Irving Fishman testified concerning the large-scale importation of foreign Communist propaganda into the United States (see *supra*, p. 11). The twelve involuntary witnesses, who testified before and after petitioner, were questioned concerning information possessed by the Committee about their membership and activities in the Communist Party. Furthermore, when inquiry was not cut off at the outset by the witness' refusal to answer, the Subcommittee tried to obtain information concerning his Party activities in colonizatio , infiltration, and propaganda in the South (see *supra*, pp. 10–12, 21–24).

The Staff Director of the Committee testified at the trial that petitioner was subpoenaed to appear before the Subcommittee because of information that he had

been a member of the Communist Party for a long period, that he had been recently sent by the Party to Atlanta "for the purpose of conducting communist activities in the South and more specifically in the Atlanta area," that he had been "actively engaged" in Communist work in the Emergency Civil Liberties Committee which was thought to be a "communist operation," and that he "had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South" by that Committee (see *supra*, pp. 13–14).

When petitioner appeared before the Subcommittee and refused to answer whether he was a member of the Communist Party, the Staff Director of the Committee stated that the Committee had the responsibility of investigating Communist operations and activities in the United States in order to ascertain the value of various legislative proposals before the Committee (see *supra*, pp. 15–16). The Staff Director continued that, if petitioner answered the question of membership, he would then be questioned, in order "to develop legislation to protect the United States," concerning his activities "as a Communist on behalf of the Communist Party," his propaganda activities, and his activities "to destroy the Federal Bureau of Investigation and the Committee * * *" (see *supra*, p. 17). After petitioner again refused to answer the question about his Party membership, the Chairman of the Subcommittee explained that one of the reasons for subpoenaing petitioner was that the Committee believed that he "could shed light on the current methods of organizing or regrouping or reconstructing of

the party and subdivisions thereof" in connection with pending legislation (see *supra*, p. 18).

In his statement at the close of the hearing, the Subcommittee Chairman said that the Subcommittee had obtained information concerning Communist propaganda, both foreign and domestic, and Communist activities, especially in relation to infiltration of the textile and other industries in the South (see *supra*, pp. 24–25).

We submit that this record demonstrates that the Subcommittee subpoenaed petitioner in order to investigate three subjects.[11] The first and apparently most important was to investigate Communist infiltration and colonization activities in the South—both overt and through the Emergency Civil Liberties Committee, which was thought to be a means for directing Communist activities in the South by Communist agents in northern cities; the second subject was the Party's organization and reconstitution; and the third was the Party's propaganda activities, especially in the South, including but not confined to efforts to hinder and abolish the F.B.I. and the Committee.

Petitioner relies (Pet. Br. 7–8, 13, 21), in claiming that the Subcommittee was investigating only criticism of the Committee, on a statement of the Staff Director of the Committee when petitioner refused to testify

[11] There is no indication that petitioner was subpoenaed to testify concerning foreign Communist propaganda in the South, which was another subject of the hearings as a whole (see *supra*, pp. 33, 34). In any event, that subject was authorized by specific provisions in Rule XI and the resolution authorizing the Subcommittee's investigation (see *supra*, pp. 3–4).

concerning his Party membership.[12] The Staff Director said that petitioner was "not even subpenaed for these particular hearings until we learned that you were in town" "for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings" (see the Statement, *supra*, p. 17). But in this same statement the Staff Director said that the Committee was investigating Communist operations and activities in connection with various legislative proposals and that, for this purpose, petitioner would be questioned generally concerning his Party activities as well as his propaganda activities (see *supra*, pp. 15–16, 17). Thus, when the statement relied upon by petitioner is considered in context, it clearly refers only to the *occasion* for calling petitioner as a witness—that he happened to be in Atlanta at the time—not to the purpose for which he was called or to the subject under inquiry. Moreover, this construction is supported by the Staff Director's testimony at petitioner's trial explaining why the

[12] The only other basis cited for petitioner's claim (Pet. Br. 14) is a statement in the Committee's "Synopsis" of the hearings (U.S. Ex. 1, p. 2604; R. 78): "Frank Wilkinson was also called as a witness when he appeared in Atlanta as a representative of the Emergency Civil Liberties Committee. This is an organization with headquarters in New York, which has as its avowed purpose the abolition of the House Committee on Un-American Activities and the curbing of F.B.I. activities. Mr. Wilkinson refused to answer when asked if he was sent to Atlanta to disrupt the Committee hearings. In reply to all questions asked him, he replied, 'I am answering no questions of this committee.'" The description of the question asked petitioner is inaccurate and, in any event, the statement does not even purport to state the Committee's purpose in subpoenaing petitioner.

Subcommittee decided to subpoena petitioner only a week before the hearings. He stated that the Committee had known that petitioner had been "actively engaged for some considerable period of time in communist work in the Emergency Civil Liberties Committee" and particularly in leading these activities in the South, but did not know until shortly before the hearings that he would be in Atlanta at the time when they were to be held (see *supra*, pp. 13–14). When all of the statements of the Staff Director are considered, together with the resolution authorizing the Subcommittee's investigation, the statement of the Chairman of the Committee opening the hearings, the testimony and questions asked other witnesses, the explanation of the Subcommittee's Chairman after petitioner refused to answer, and the statement of the Subcommittee's Chairman closing the hearings, it is clear that the Committee was investigating all three subjects mentioned above when it subpoenaed and questioned petitioner. Thus, if the Subcommittee were investigating petitioner's criticism of the Committee at all, it was as a portion of its investigation of Communist propaganda activity. And even if it were considered as a separate subject of the investigation, it was only one of four such subjects.

B. THE SUBJECTS UNDER INQUIRY WHEN PETITIONER WAS SUBPOENAED WERE WITHIN THE AUTHORITY OF THE COMMITTEE AND SUBCOMMITTEE

All three of the above-stated subjects of the Subcommittee's investigation were clearly within House Rule XI (H. Res. 5, 85th Cong., 1st Sess.) which is the authorizing resolution of the Committee. In

Barenblatt, the Court held, on the basis of an extensive review of the language of Rule XI (360 U.S. at 116–123) and its gloss of legislative history, that "the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country" (*id.* at 118). And the Court refused "to exclude the field of education from the Committee's compulsory authority" (*id.* at 121) even though investigation of this field raised constitutional questions. Certainly, Communist infiltration and propaganda activity in the South, and the organization of the Communist Party, come within the Court's description of the Committee's authority.

Insofar as the Subcommittee was investigating Communist efforts to abolish or hinder the F.B.I. and the Committee—including what petitioner labels "criticism" of these two groups—the Subcommittee was merely investigating a subcategory of the Party's propaganda activities. There is no apparent reason, nor does petitioner suggest any, why the Party's efforts to abolish or hinder the F.B.I. and the Committee are different from other propaganda activities of the Communist Party. And such activities not only come within the statement of the Committee's authority in the *Barenblatt* case, but are directly within clause 1 of Rule XI, which authorizes the Committee to investigate "the extent, character, and objects of Un-American propaganda activities in the United States * * *" (see the Statement, *supra*, p. 3).

Rule XI gives any of the Committee's subcommittees the same authority as that granted the Committee itself. Moreover, all three subjects of the Subcom-

mittee's investigation were authorized by the resolution of the Committee concerning these hearings. Clause 1 of that resolution specifically provides for an investigation of "[t]he extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South * * *" (U.S. Ex. 1, p. 2605; R. 79). The second subject of the Subcommittee's investigation, the organization and reconstruction of the Communist Party, comes within clause 3 of the resolution authorizing the Subcommittee's investigation, which provides authority to investigate "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (*id.* at 2606; R. 80). As we have shown, the organization of the Party is within the authority of the Committee. The third subject of the investigation, that relating to the Party's propaganda activities in the South, is within clause 1 of the Subcommittee's authorizing resolution. That clause provides for an investigation of "Communist Party propaganda activities in the South * * *," which would include the Party's attempts to bring pressure to stop the Atlanta hearings (*id.* at 2605; R. 79).

Even if petitioner's criticism of the Committee were considered as an independent subject of investigation, this subject was also authorized since the Committee and, by clause 3 of the resolution, the Subcommittee were authorized to investigate all Communist activity and they had been informed that petitioner was an active and leading Party member. But even if this subject were not authorized, petitioner was subpoenaed in relation to three other subjects which were author-

ized and the question he refused to answer was pertinent to these subjects as well (see *infra*, pp. 46–49). Since petitioner's conviction was based on refusal to answer a question relating to authorized subjects of inquiry, it was clearly valid.

II. PETITIONER, HAVING FAILED TO CHALLENGE THE PERTINENCY OF THE QUESTION, CANNOT RAISE THE ISSUE FOR THE FIRST TIME AT HIS TRIAL. IN ANY EVENT, THE QUESTION WAS PERTINENT TO THE SUBJECTS UNDER INQUIRY AND THIS PERTINENCY WAS MADE CLEAR TO PETITIONER

A. THE ISSUE OF PERTINENCY WAS NOT PROPERLY RAISED BEFORE THE SUBCOMMITTEE

Petitioner argues (Pet. Br. 11–13) that the question which he refused to answer was not pertinent to the subject under inquiry and that this pertinency was not made undisputably clear to him. But petitioner failed to raise this objection before the Subcommittee and, under this Court's decisions, is precluded from raising it for the first time in the contempt proceeding.

In *Hale* v. *Henkel*, 201 U.S. 43, the witness based his refusal to produce documents on three grounds, one of which being that it was "impossible for him to collect them within the time allowed" (*id.* at 70). The Court indicated that it would not consider this objection because, "[h]ad the witness relied solely upon [this] ground, doubtless the court would have given him the necessary time" (*ibid.*). *United States* v. *Bryan*, 339 U.S. 323, 334, in commenting on the *Hale* case, stated:

> [H]aving refused compliance for other reasons which the lower court could not remedy, the

> witness could not later complain of its refusal to do a meaningless act—to grant him additional time to gather papers which he had indicated he would not produce in any event.

Similarly, *Bryan* held that a witness who, having been subpoenaed to appear and produce records before a congressional committee, appears but refuses to produce the records, may not raise at his trial for the first time the issue whether a quorum of the committee was present. The Court stated that "[t]he defect in composition of the Committee, if any, was one which could easily have been remedied. * * * For two years, now grown to four, the Committee's investigation was obstructed by an objection which, so far as we are informed, could have been rectified in a few minutes" (339 U.S. at 333). Moreover, it was apparent that this witness "would not have complied with the subpoenas no matter how the Committee had been constituted at the time. * * * Here respondent would have the Committee go through the empty formality of summoning a quorum of its members to gather in solemn conclave to hear her refuse to honor its demands" (*id.* at 333–334). And in *United States* v. *Fleischman*, 339 U.S. 349, 352, the Court, relying on *Bryan*, stated simply that the issue of a quorum "was raised for the first time at the trial, two years after [the witness'] appearance before the Committee, where she had given other reasons for her failure to produce the documents," and therefore "the defense of lack of quorum was not available to her."

The principles laid down by the Court in the *Hale*, *Bryan*, and *Fleischman* cases are fully applicable as

to the issue of pertinency. When a witness challenges the pertinency of a question, the congressional committee or its counsel can explain more fully the relationship between the question and the subject under inquiry. Indeed, the committee can even change the subject under inquiry if that is necessary to make the question pertinent.[13] Moreover, when a witness relies on other grounds for refusing to answer the question, the pertinency of the question, like the existence of a quorum, is immaterial since the witness would not have answered no matter how clear the committee made the pertinency of the question appear.

Watkins v. *United States*, 354 U.S. 178, considered the issue raised by petitioner—that is, the pertinency of the question to the subject under inquiry by the committee. There, the Court held that "[u]nless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, *upon objection of the witness on grounds of pertinency*,[14] to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto" (*id.* at 214–215; emphasis added).[15] The footnote to this sentence

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[13] Here, the Committee resolution authorizing the hearings specifically allows the Subcommittee to investigate any matter within the Committee's jurisdiction which the Subcommittee designates (U.S. Ex. 1, p. 2606; R. 80).

[14] The witness had specifically stated to the Committee that "I do not believe that such questions are relevant to the work of this committee * * *" (354 U.S. at 185).

[15] The *Watkins* case also states that "[t]he final source of evidence as to the 'question under inquiry' is the Chairman's response when petitioner objected to the question on the grounds of lack of pertinency" (354 U.S. at 214).

reads "Cf. *United States* v. *Kamin*, 136 F. Supp. 791, 800" (354 U.S. at 215, note 55). At page 800 of the *Kamin* opinion, then District Judge Aldrich emphasized the necessity of a specific objection on grounds of pertinency:

> The defendant contends that it is not enough for a question to be pertinent—the witness must be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.

The requirement that the issue of pertinency be raised before the investigating committee was made absolutely clear by the holding in *Barenblatt* v. *United States, supra,* 360 U.S. at 123–124. Indeed, this Court stated that the issue is not even raised by a memorandum submitted to the Committee by a witness saying that "I might wish to * * * challenge the pertinency of the question to the investigation" and quoting, from an opinion of this Court, "language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency. These statements cannot, however, be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and buried as they were in the context of petitioner's general challenge to the power of the Subcommittee they can hardly be considered adequate within the meaning of what was said in *Watkins* * * *,

to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" (*id.* at 123–124).

Petitioner in the instant case did not make even the anticipatory and buried objection to pertinency made by the witness in *Barenblatt* in refusing to answer whether he was a member of the Communist Party. Rather, he based his refusal to answer this question on "conscience and personal responsibility," then gave no reason at all, and finally challenged the "legality" of the Committee under the First Amendment and its power to investigate speech, religion, peaceful association, assembly and the press (*supra*, pp. 15, 17, 19). Thus, even though the possibility of objecting to the pertinency of the questions was suggested to petitioner several times when he appeared before the Subcommittee (U.S. Ex. 1, pp. 2681, 2682, 2683, 2685, 2686; R. 155, 156, 157, 159, 160), he clearly based his refusal to answer completely on First Amendment grounds.[16]

B. THE QUESTION CONCERNING PETITIONER'S PARTY MEMBERSHIP WAS PERTINENT TO THE SUBJECTS UNDER INQUIRY AND THIS PERTINENCY WAS MADE TO APPEAR WITH INDISPUTABLE CLARITY TO PETITIONER

As we have shown, the decisions of this Court establish that a witness cannot raise the issue of pertinency

[16] Since petitioner did not have counsel when he appeared before the Subcommittee, he can perhaps be excused from using precisely the appropriate language to raise the issue of pertinency. But petitioner's constitutional objections do not suggest that he is challenging the pertinency of the question in any sense. Moreover, since petitioner admitted that he knew that he had a right to counsel (U.S. Ex. 1, p. 2681; R. 155), his failure to raise the issue of pertinency was either deliberate or at the least done on his own responsibility.

for the first time at his trial. In any event, however, here as in *Barenblatt* (360 U.S. at 124–125), petitioner had been fully apprised of the pertinency of the question when he finally refused to answer.

In *Watkins* v. *United States, supra,* 354 U.S. at 214–215, the Court held:

> Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. To be meaningful, the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise questions relate to it.

Among the sources of such an explanation, the Court noted the resolution authorizing the subcommittee hearings, the opening statement of the Chairman at the hearings, the testimony of previous and subsequent witnesses, and the response of the subcommittee when the witness refused to answer the questions on grounds of lack of pertinency (*id.* at 211–214). In *Barenblatt,* 360 U.S. at 124–125, the latter three factors were relied on to show that the witness was apprised of the subject under investigation.

1. The pertinency of the question which petitioner refused to answer is clear as a matter of law. We have shown (*supra,* pp. 33–38) that the three subjects under investigation at the hearings which were the basis for subpoenaing and questioning petitioner were Communist infiltration and colonization activities in the South, the Party's organization, and the Party's propa-

ganda activities, particularly in the South, including efforts to abolish or hinder the F.B.I. and the Committee. The question whether petitioner was a member of the Communist Party was an introductory, qualifying question which was obviously pertinent to all those subjects which the Subcommittee intended to pursue.

2. As to whether petitioner was adequately apprised of the pertinency of the question at the Subcommittee hearings, the trial judge instructed the jury that in order to find petitioner guilty, it must find that "the subject matter under inquiry and the relationship or pertinency of that question to that subject matter would have been clear to the average person in the defendant's position" (R. 60). The jury's finding to this effect is fully supported by the record. The subjects under inquiry were conveyed to petitioner by all the methods suggested in *Watkins*—by the resolution authorizing the Subcommittee's investigation which was introduced into the hearing record (*supra*, p. 4) while petitioner was present (R. 34, 50) and which was available to him, by the statement of the Chairman of the Committee made at the opening of the hearings (*supra*, pp. 6–8), while petitioner was present (R. 34, 50), by the prior testimony of other previous witnesses at the hearings, particularly that of Armando Penha (see *supra*, pp. 8–12),[17] and by the statements of the Staff Director and Chairman of the Subcommittee after petitioner's refusal to answer

[17] The record does not show the full period of time when petitioner was present at the hearings. He was, however, present when the Chairman of the Subcommittee made his opening remarks which immediately preceded Penha's testimony.

(*supra*, pp. 15–18).[18] After these statements "as to why he had been called as a witness by the Subcommittee," petitioner, like Barenblatt, asked for no further explanation (*Barenblatt*, 360 U.S. at 125).

As to the "connective reasoning" between the subjects under inquiry when petitioner testified and the particular questions asked, both the Staff Director and Chairman of the Subcommittee described the questions which would follow if petitioner answered whether he was a member of the Communist Party. The former stated that the Subcommittee wished to pursue the inquiry by questioning him concerning his activities on behalf of the Communist Party, including his propaganda activities to destroy the F.B.I. and the Committee (see *supra*, p. 17). The Chairman of the Subcommittee stated that it wished to question petitioner concerning the organization of the Communist Party in order to evaluate pending legislation (see *supra*, p. 18).

Moreover, the Subcommittee was not even required to provide petitioner with the connective reasoning. In *Barenblatt*, the Court held, with regard to an investigation of Communist activity in the field of education, that "unlike Watkins * * * [Barenblatt] refused to answer questions as to his own Communist

[18] The only additional materials which we have cited to show the three subjects under inquiry at the hearings (*supra*, pp. 33–37), were the testimony of the Staff Director of the Committee at petitioner's trial, the testimony of witnesses who testified after petitioner at the hearings, and the closing statement of the Subcommittee Chairman. These materials, however, are merely cumulative evidence of the subjects under inquiry which were already fully conveyed to petitioner when he testified at the hearings.

Party affiliations, whose pertinency of course was clear beyond doubt" (360 U.S. at 125). Similarly, here the pertinence of petitioner's membership in the Party to the Subcommittee's investigation of Communist infiltration and propaganda activity in the South, and the organization of the Communist Party, was clear beyond doubt. While subsequent questions might possibly require explanation of their pertinency, this introductory question relating to the witness' ability to provide information on the subject of Communist activity was obviously pertinent.

III. THE SUBCOMMITTEE'S INVESTIGATION DID NOT VIOLATE THE FIRST AMENDMENT

In *Barenblatt* v. *United States, supra,* this Court considered, *inter alia,* whether a question asked by a congressional committee as to witness' membership in the Communist Party violated the First Amendment (360 U.S. at 126). In deciding this issue, the Court held (*ibid.*):

> [T]he protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.

In striking this balance, the courts must first determine whether the "investigation was related to a valid legislative purpose, for Congress may not con-

stitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose" (*id.* at 127).

A. THE SUBCOMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE

As we have shown (*supra,* pp. 33–38), the Subcommittee had three subjects under inquiry when it subpoenaed and sought to question petitioner. Two of these subjects—Communist infiltration and colonization in the South, particularly of basic industries, and the Party's organization—are clearly not prohibited under the First Amendment. *American Communications Assn.* v. *Douds,* 339 U.S. 382, upheld broad congressional power to legislate in the field of Communist activity in labor and industry, and *Dennis* v. *United States,* 341 U.S. 494, upheld the validity of the organizing clause of the Smith Act which prohibits the organizing of groups to advocate overthrow of the Government of the United States by force or violence. The basis for these decisions is that the Communist Party is not an ordinary political party and therefore that federal legislation concerning its activity is valid even though "in a different context [it] would certainly have raised constitutional issues of the gravest character" (*Barenblatt,* 360 U.S. at 128). And, in any event, the *Barenblatt* decision established that Congress' power to investigate extends, at least to some extent, beyond its power to legislate since "of necessity the investigatory process must proceed step by step" (*id.* at 130).

As to the Subcommittee's power to investigate the third subject of the hearings—Communist activity in

the field of propaganda, including efforts to hinder or abolish the F.B.I. and the Committee—this issue is also controlled by *Barenblatt*. There, the Court held that the congressional committee could investigate Communist activity in the field of education (360 U.S. at 129–132) even though this field is protected by the First Amendment. Equally, the Subcommittee here had the constitutional power to investigate Communist activity in the area of propaganda even though this area is likewise protected by the First Amendment.

Petitioner, however, claims (Pet. Br. 20–21) that he was subpoenaed merely because of his "criticism" of the Committee and attempts to rally sentiment against it. Therefore, he contends, the Committee subpoenaed him for the invalid legislative "purpose of harassing or exposing him."[19] This contention is

[19] Petitioner supports his claim (Pet. Br. 21) that the Subcommittee's purpose in subpoenaing him is shown to be harassment and exposure by the fact that he had previously refused to answer questions asked by the Committee at a hearing in Los Angeles in 1956 (Hearings before the Committee on Un-American Activities, House of Representatives, 84th Cong., 2d Sess., at Los Angeles, California, December 5–8, 1956, entitled "Communist Political Subversion, Part 1," pp. 6747–6753). But there seems no reason to give special protection from congressional investigations to persons merely because they have previously refused to testify. This seems particularly true here since the Subcommittee was questioning petitioner concerning different subjects than those of the earlier hearings. Indeed, the question whether petitioner was a member of the Communist Party in 1958 sought information which could not possibly have been sought in 1956.

Moreover, while petitioner had refused to answer questions before a Subcommittee in 1956, it was not improbable that nineteen months later in 1958 he might have changed his mind—particularly since the information sought by the Subcommittee,

without merit for several reasons. First, as we have shown (*supra*, pp. 37–38), petitioner's appearance in Atlanta in an attempt to rally sentiment against the Committee was merely the occasion for subpoenaing him to testify. Second, even if that had been a purpose of the Committee in subpoenaing him, it was one kind of propaganda activity, allegedly by the Communist Party. As we have shown (*supra*, p. 51), the investigation of Communist propaganda activity is a valid legislative purpose. Third, even if petitioner's criticism of the Committee had been an independent purpose of the Committee in subpoenaing him, it was only one of several purposes—and the other three purposes (see *supra*, pp. 36–37) were clearly valid. The question as to petitioner's membership in the Communist Party was equally relevant to all these purposes (see *supra*, pp. 46–47).

Fourth, the Subcommittee was pursuing a valid legislative purpose even if it be assumed that its sole purpose was investigation of Communist Party criticism of the Committee and that such criticism does not constitute propaganda. This Committee

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after the introductory question, was different. While the Committee had information that petitioner had criticized it and worked for its abolition, the Committee apparently hoped that petitioner would testify and would not again improperly invoke the First Amendment. At least, the record lends no support to the claim that the Committee knew that petitioner would not testify; in fact, the lengthy explanations made to petitioner by the Staff Director and Chairman of the Subcommittee concerning the purpose of the inquiry (see *supra*, pp. 15–18) suggest the contrary. Cf. *Flaxer* v. *United States*, 358 U.S. 147, 151, where the Court said that "for all we know, a witness who was adamant and defiant on October 5 might be meek and submissive on October 15."

constantly has before itself the issues whether it should be abolished, continue its present course, or change or expand its activities. The issues are presented in each session of Congress by resolutions authorizing the Committee and providing appropriations. In asking the House for action on these resolutions, it is proper for the Committee to consider the source of the criticism, at least where the Communist Party itself is the source of the criticism. The Communist Party is not just another political party, nor is it akin to other organizations interested in public affairs. As this Court has recognized (*Barenblatt*, 360 U.S. at 128), the ultimate objective of the Communist Party, to which its intermediate and peaceable objectives (such as abolition or interference with the Committee) are dedicated, is overthrow of the legislative process, and indeed the entire Government of the United States. Just as Congress can investigate Communist activities in education and propaganda, even though these are areas generally within the protection of the First Amendment, it can likewise investigate Communist efforts to influence the legislative process.

The power of Congress to investigate—not to prohibit—petitioner's legal attempts to influence legislation is strongly supported by decisions of this Court. In at least two cases, this Court has upheld disclosure statutes enacted to maintain the integrity of a basic governmental function, even though disclosure necessarily touched upon First Amendment rights to some extent. *Burroughs* v. *United States*, 290 U.S. 534, held constitutional the Federal Corrupt Practices Act which required disclosure of contributors to elec-

tion campaigns. *United States v. Harriss*, 347 U.S. 612, upheld the constitutionality of the Federal Regulation of Lobbying Act which required disclosure of propaganda activities affecting the legislative process (*id.* at 625): "Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose." And *Barenblatt* clearly indicates that the investigative power of Congress extends beyond the previous limits of its powers to legislate (360 U.S. at 130).

Lastly, this Court in *Watkins* and *Barenblatt* categorically refused to consider claims such as that raised by petitioner. *Watkins* stated that, while Congress has no "power to expose for the sake of exposure," the courts cannot test "the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served" (354 U.S. at 200). Similarly, *Barenblatt*, in rejecting a claim that the "true objective of the Committee and of the Congres was purely 'exposure'," held that, "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power" (360 U.S. at 132). This holding is particularly applicable here since, not only was the Subcommittee acting within the boundaries of Congress' constitutional power (see *supra*, pp. 50–51), but the motive of harassment and

exposure is, on the face of the record, at most only one of several motives underlying the subpoenaing of petitioner. Moreover, the Chairman of the Committee specifically stated that no witness was subpoenaed "merely for the sake of exposure or to put on a show" (see *supra*, p. 8) and the Committee's Resolution, the Chairman of the Committee, the Chairman of the Subcommittee, and the Staff Director all repeatedly stated that the hearings were being pursued, in general and with regard to petitioner, to obtain information relating to existing and contemplated legislation (see *supra*, pp. 4, 6–7, 12, 15–16, 17, 18, 22, 25).

B. THE BALANCE OF INDIVIDUAL AND GOVERNMENTAL INTERESTS SUPPORTS THE SUBCOMMITTEE'S INQUIRY

This Court in *Barenblatt* considered questions asked by a congressional committee of a college teacher about his Communist Party activities. The Court concluded that "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134). The governmental interests at stake in the present case are at least as strong as those in *Barenblatt*.

As we have shown (*supra*, pp. 33–40), the Subcommittee in questioning petitioner was seeking information on Communist infiltration, particularly in basic industries in the South, the organization of the Communist Party, and Communist propaganda activities especially in the South. This Court has found a "close nexus between the Communist Party and

violent overthrow of government" (*Barenblatt*, 360 U.S. at 128)[20] and has therefore upheld broad governmental powers to investigate and legislate on Communist activities. *Id.* at 128–129; *American Communications Association* v. *Douds*, 339 U.S. 382; *Garner* v. *Los Angeles Board*, 341 U.S. 716; *Galvan* v. *Press*, 347 U.S. 522; *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Carlson* v. *Landon*, 342 U.S. 524; *Dennis* v. *United States*, 341 U.S. 494; *Adler* v. *Board of Education*, 342 U.S. 485; *Lerner* v. *Casey*, 357 U.S. 468. Thus, the strong governmental interest in this area has been repeatedly recognized by this Court.

The Court in *Barenblatt* noted three particular factors in weighing the governmental interest against that of the individual (360 U.S. at 134). First, the Court found that "[t]here is no indication in this record that the Subcommittee was attempting to pillory witnesses" (*ibid.*). Similarly, there is no such

[20] Petitioner attempts (Pet. Br. 18–19) to distinguish *Barenblatt* on the ground that here there was no testimony at these hearings concerning the Party's foreign domination and revolutionary purposes and efforts. But certainly the Committee was not required to establish such facts again and again in every hearing. Here, it was properly investigating new areas of Communist activity on the basis of facts previously found. Petitioner also claims *Barenblatt* is distinguishable since the Committee here showed no concern with infiltration for the purpose of attempting overthrow of the Government. Here also, however, the Committee was entitled to proceed on the basis of the previously found facts that infiltration, especially of basic industries, had this purpose. Moreover, the record of the hearings does indicate that this was the underlying concern of the Committee (see, *e.g.*, U.S. Ex. 1, 2606–2607, 2609–2611, 2621, 2687, 2714–2715; R. 80–81, 83–85, 95, 161, 188–189).

indication in the record in the instant case. On the contrary, the Subcommittee patiently explained the valid legislative purposes of the inquiry to petitioner (see *supra*, pp. 15–18). Moreover, the Chairman of the Subcommittee suggested that petitioner "invoke the privilege of the fifth amendment if you honestly fear that the answers to the questions propounded to you would tend to incriminate you" (U.S. Ex. 1, pp. 2683–2684; R. 157–158).

Second, the Court found that Barenblatt's "appearance as a witness [did not] follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee" (360 U.S. at 134). Here, the Committee had information that petitioner was a leading and "hard-core" member of the Communist Party, that he had recently been sent to Atlanta "for the purpose of conducting Communist activities in the South and more specifically in the Atlanta area," that he had been "actively engaged" in Communist work in the Emergency Civil Liberties Committee which was thought to be a "communist operation," and that he "had been designated by the Communist hierarchy in this nation to spearhead or to lead the infiltration into the South" by that Committee (see *supra*, pp. 13–14, 16–17). Certainly, this information was a sufficient basis for the Subcommittee to ask petitioner whether he was a member of the Communist Party, preliminary to questioning him concerning Party infiltration and propaganda activity in the South, and the Party's organization. Petitioner's refusal to answer at the outset of the question-

ing, however, prevented the Subcommittee from pursuing such topics.

Third, in *Barenblatt,* the Court said that "the relevancy of the questions put to [Barenblatt] by the Subcommittee is not open to doubt" (360 U.S. at 134). The question as to petitioner's membership in the Communist Party was identical to one of the questions discussed and upheld by the Court in *Barenblatt* (*id.* at 114, 120 at note 25). Thus, the relevancy of this question in the present case is likewise clear (see *supra,* pp. 46–49).

In addition to these considerations specifically noted in *Barenblatt,* at least two other factors support the same result here. *Barenblatt* was a college teacher by profession, and one of the questions asked him and sustained by the Court related to his membership in a club of the Communist Party at the University of Michigan (360 U.S. at 114, 126 at note 25). As the concurring opinion in *Sweezy* v. *New Hampshire,* 354 U.S. 234, 261–263, indicated, college education is perhaps a particularly sensitive area requiring the protection of the First Amendment. Here, there is nothing to indicate that petitioner stands in any different position than any other person as to whom the Committee had information that he was an active and long-time Party member.

And the question petitioner refused to answer concerned his present Party membership. In *Barenblatt,* the Court sustained questions whether Barenblatt was ever a Party member and whether he belonged to a Party club at least four years before the committee hearings (360 U.S. at 114, 126 at note

25). Thus, there is even more reason in the circumstances of this case than in *Barenblatt* to strike the balance in favor of the governmental, rather than individual, interest.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

J. LEE RANKIN,
Solicitor General.
J. WALTER YEAGLEY,
Assistant Attorney General.
BRUCE J. TERRIS,
Assistant to the Solicitor General.
KEVIN T. MARONEY,
LEE B. ANDERSON,
Attorneys.

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